

## Update: Managing a Trial Under The Controlled Substances Act

### CHAPTER 2

#### Delivery Offenses Under §§7401 and 7402

#### 2.8 Criminal Penalties for Weight-Based Delivery Offenses Involving Schedule 1 or 2 Narcotics or Cocaine

##### C. 50 Grams or More, But Less than 450 Grams

The information contained in Section 2.8 on pages 52-53 was replaced in its entirety by an update published in April 2003. Referencing the April 2003 update, add the following language to the first bullet in subsection C:

A defendant sentenced to the mandatory minimum sentence in effect before March 1, 2003, is not entitled to be resentenced in accordance with the ameliorative provisions of 2002 PA 665. *People v Thomas*, \_\_\_ Mich App \_\_\_, \_\_\_ (2004). In *Thomas*, the defendant was convicted under the pre-amended version of MCL 333.7401(2)(a)(iii) of possession with intent to deliver more than 50 but less than 225 grams of cocaine for which he was sentenced to a mandatory minimum sentence of ten years' imprisonment. *Thomas, supra* at \_\_\_. Effective March 1, 2003, 2002 PA 665 retained the 20-year maximum penalty for §7401 violations but eliminated the mandatory ten-year minimum penalty. *Thomas, supra* at \_\_\_. Relying on the plain language of the paragraph added to MCL 791.234 by 2002 PA 665, the Court of Appeals affirmed the trial court's denial of the defendant's motion for resentencing. According to the Court, the relief intended by the Legislature in amending the statutes involving controlled substance violations is fully and clearly provided by the early parole eligibility available under MCL 791.234(12):

“An individual convicted of violating or conspiring to violate section 7401(2)(a)(iii) . . . of the public health code . . . before the effective date of the amendatory act that added this subsection is eligible for parole after serving the minimum of each sentence

imposed for that violation or 5 years of each sentence imposed for that violation, whichever is less.” *Thomas, supra* at \_\_\_\_.

## CHAPTER 15

### Sentencing

#### 15.2 Sentencing for Major Controlled Substance Offenses

Replace the language preceding subsection (A) on pages 316 and 317 with the following:

Major controlled substance offenses are defined in the Code of Criminal Procedure as any one of the following:

- ♦ a violation of section 7401(2)(a) of the public health code, MCL 333.7401(2)(a);
- ♦ a violation of section 7403(2)(a)(i) to (iv) of the public health code, MCL 333.7403(2)(a)(i) to (iv); or
- ♦ conspiracy to commit an offense listed above. MCL 761.2

#### A. Delivery Offenses Under §7401

Change the title of subsection (A) as indicated, and replace the entire content of subsection (A) on pages 317 and 318 with the following:

Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401(2)(a) by changing the weight categories and corresponding penalties for all delivery offenses involving mixtures containing Schedule 1 or 2 narcotics or cocaine. Also changed under 2002 PA 665 is the consecutive sentencing provision under MCL 333.7401(3), which now makes consecutive sentencing for the commission of another felony discretionary. Finally, 2002 PA 665 added provisions allowing discharge from lifetime probation after an individual has served five or more years of that probationary period.

MCL 333.7401(2)(a), as amended by 2002 PA 665, delineates three new subsections of weight categories and punishment and leaves one subsection (Less Than 50 Grams)\* intact, as follows:

##### 1. 1,000 Grams or More

- Imprisonment for life or any terms of years or a maximum fine of \$1,000,000.00, or both. MCL 333.7401(2)(a)(i).
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).

\*Except that effective March 1, 2003, 2002 PA 665 amended MCL 333.7401(2)(a)(iv) by deleting the mandatory one-year imprisonment requirement for deliveries of less than 50 grams.

- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

## **2. 450 Grams or More, But Less than 1,000 Grams**

- Imprisonment for not more than 30 years or a maximum fine of \$500,000.00, or both. MCL 333.7401(2)(a)(ii).
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).
- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

## **3. 50 Grams or More, But Less than 450 Grams**

- Imprisonment for not more than 20 years or a maximum fine of \$250,000.00, or both. MCL 333.7401(2)(a)(iii).
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).
- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

## **4. Less Than 50 Grams**

- Imprisonment for not more than 20 years or a maximum fine of \$25,000.00, or both. MCL 333.7401(2)(a)(iv).\*
- Consecutive sentencing discretionary. MCL 333.7401(3).
- Eligible for probation, suspension of sentence, or parole. MCL 333.7401(3).
- Eligible for sentence reduction by disciplinary credits or other types of sentence credits. MCL 333.7401(3).

\*Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401(2)(a)(iv) by deleting the mandatory one-year imprisonment requirement.

## **B. Possession Offenses Under §7403**

Effective March 1, 2003, 2002 PA 665 amended MCL 333.7403(2)(a) by changing the weight categories and corresponding penalties for all the possession offenses involving mixtures containing Schedule 1 or 2 narcotics or cocaine. In addition, 2002 PA 665 added provisions allowing discharge from lifetime probation after an individual has served five or more years of that probationary period.

MCL 333.7403(2)(a), as amended by 2002 PA 665, delineates three new subsections of weight categories and punishment but leaves two subsections

(25 Grams or More, But Less Than 50 Grams, and Less Than 25 Grams) intact, as follows:

**1. 1,000 Grams or More**

- Imprisonment for life or any terms of years or a maximum fine of \$1,000,000.00, or both. MCL 333.7403(2)(a)(i).

**2. 450 Grams or More, But Less than 1,000 Grams**

- Imprisonment for not more than 30 years or a maximum fine of \$500,000.00, or both. MCL 333.7403(2)(a)(ii).

**3. 50 Grams or More, But Less than 450 Grams**

- Imprisonment for not more than 20 years or a maximum fine of \$250,000.00, or both. MCL 333.7403(2)(a)(iii).

**4. 25 Grams or More, But Less Than 50 Grams**

- Imprisonment for not more than four years or a maximum fine of \$25,000.00, or both. MCL 333.7403(2)(a)(iv).\*

\*Effective March 1, 2003, 2002 PA 665 amended MCL 333.7403(2)(a)(iv) by deleting the mandatory one-year imprisonment requirement.